

ARTICLE 5: USE AND DIMENSIONAL STANDARDS

Section 5.1 Table of Permitted Uses

Uses allowed in the districts named in this ordinance shall be in accordance with the following table in which “x” signifies that the use is permitted as of right, “s” indicates that the use is a special use which requires approval of the Town Board of Commissioners, and a blank indicates that the use is not permitted in that zoning district. Uses allowed in Special Use Districts shall be in accordance with Section 5.3.

	<i>R80W</i>	<i>R40W</i>	<i>R1</i>	<i>R1-S</i>	<i>R1-D</i>	<i>R2</i>	<i>R2-D</i>	<i>RMH</i>	<i>RuMH</i>	<i>UMH</i>	<i>C</i>	<i>CO</i>	<i>OP</i>	<i>I</i>
Above ground storage of petroleum products (NFPA rules may apply)												s		s
Adult day care													s	
Adult entertainment														s
Amusement, recreation, and sporting good manufacturing														x
Animal hospital or veterinary clinic											x	x		
Animal Service Facility											s	s		s
Art, Dance, or photo studios											s	s	s	
Automobile carwash (use of recycled water only and UDO Article 8 standards)												s		
Automobile detailing											x	x		
Automobile parts and accessories manufacturing														x
Automobile repair garages (UDO Article 8)											s	x		
Automobile service stations											s	s		
Banks											x	x	x	
Barber and Beauty shops											x	x	x	
Bed, Breakfast, & Tourist home														s
Bedding and Carpet Manufacturing														x
Bottling and canning plant														x
Building materials sales														x
Business machine manufacturing														x
Churches & places of worship	x	x	x		x	x	x	x						
Clothing manufacturing														x
Clubs (civic & fraternal)	x	x	x		x	x	x	x						
Conservation development	s	s	s	s	s	s	x	s						
Construction offices and equipment storage														x
Dwelling – single family	x	x	x	x	x	x	x	x	x	x				
Dwelling – two family					x		x	x						
Dwelling – multi family					s	s	s							
Dwelling – manufactured home								x	x	x				
Dwelling – manufactured home park								x		s				
Drugs, medicines, and cosmetic manufacturing														x
Eating establishment											x	x		
Eating establishment-no drive thru													x	
Electronic equipment manufacturing														x
Electronic Gaming Operation (see 8.3.10 for additional standards)											s	s		
Farm machinery assembly, repair, and sales														x
Farming and trucking	x	x	x		x	x	x	x	x	x				
Fitness center											s	s	s	
Funeral home and crematory											x	x	x	

	<i>R80W</i>	<i>R40W</i>	<i>R1</i>	<i>R1-S</i>	<i>R1-D</i>	<i>R2</i>	<i>R2-D</i>	<i>RMH</i>	<i>RuMH</i>	<i>UMH</i>	<i>C</i>	<i>CO</i>	<i>OP</i>	<i>I</i>
Furniture manufacturing														X
Golf courses and driving range												S		
Governmental facilities	S	S	S	S	S	S	S	S	S	S	X	X	X	
Group care homes (defined by §168 for handicap persons, UDO Articles 3 and 16)	X	X	X	X	X	X	X	X	X	X				
Group housing projects (UDO Article 8.3)			S			S	S							
Hardware and housewares manufacturing														X
Home occupations	X	X	X		X	X	X	X	X	X				
Kindergartens, nurseries, day cares	X	X	X		X	X	X	X			X	X	X	
Laundromat (use of recycled water only)											S	S		
Leather product manufacturing (not including the manufacturing of leather)														X
Library											X	X	X	
Lodging or boarding of transients provided not more than 50% of gross floor area is used	X	X	X		X	X	X	X						
Market and sales of produce and seasonal goods	S	S	S								S	S		
Medical clinic											X	X	X	
Monument manufacturing														X
Offices for business and professional service											X	X	X	X
Paper products manufacturing (not including the manufacture of paper)														X
Parking lots for vehicles											X	X	X	
Plastic product manufacturing														X
Printing, graphics, or copy centers											X	X		X
Public recreational parks & centers	X	X	X	X	X	X	X	X	X	X				
Private recreation facilities part of subdivision or HOA	X	X	X	X	X	X	X	X	X	X				
Retailing establishments (excluding vehicle sales lots)											X	X	S	
Research laboratories														X
Rest homes, nursing centers, and assisted living facilities			X		X	X	X						S	
Site specific development plans (associated with §160A-385.1)	S	S	S	S	S	S	S	S	S	S	S	S	S	S
Schools (public and private)	X	X	X		X	X	X	X	X	X				
Shopping Centers (provided us is listed within this table)											X	X		
Signs	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Storage (provided not visible from street and opaque wall/fence with height of six feet)														X
Storage (provided not visible from street)											X	X	X	
Uses and buildings customarily accessory to the permitted use (UDO Article 5.5)											X	X	X	X
Uses in accessory buildings (UDO Article 5.5)	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Temporary Uses (with development standards)			S		S	S	S	S	S	S	S	S	S	X
Textiles and cordage manufacturing														X
Vehicle sales lots (parking areas for vehicles are paved with asphalt or concrete)												X		
Wrecker service and vehicle storage												S		S

Section 5.2 Table of Dimensional Requirements

Zoning District	Minimum Lot Area (in square feet)	Minimum Lot Width (in feet)*	Front Yard Setback (from ROW in feet)	Side Yard Setback (in feet)	Corner Yard Setback (in feet)	Rear Yard Setback (in feet)
R1	20,000	100	30	12	22	25
R1-S	20,000	100	30	12	22	25
R1-D	20,000	100	30	12	22	25
R2	15,000	85	30	12	22	25
R2-D	20,000	100	30	12	22	25
RMH	20,000	85	30	12	22	25
RuMH	10,000	50	25 on paved street	10	20	15
UMH	7,260	50	25 on paved street	10	20	15
C	None except for those required by Health Department	None except for those required by Health Department	None except for those required by Health Department	None or 5 feet if abutting residential use	None or 5 feet if abutting residential use	35
CO	20,000	100	20	15	25	35
OP	20,000	75	30	15	25	35
I	20,000	100	30	15	25	35

* Lot width within cul-de-sacs are to have a minimum of 35 feet width fronting the radius of curvature; the required lot width for the zoning district in which the cul-de-sac is located is to be measured at the front yard setback, along a line that parallels the radius of curvature.

Additional dimensional requirements for multi-family dwellings, townhouses, group housing projects, planned unit developments, and mobile home parks, and in watershed districts are contained in the appropriate sections of this ordinance.

The maximum height for all structures without an interior sprinkler or fire suppression system must be no taller than 35 feet.

Gasoline pumps and canopies shall be considered part of a principal use, not an accessory use and shall meet all applicable yard requirements for a principal use.

Section 5.3 Special Use Districts

A Special Use District corresponds to each of the other districts authorized in this ordinance. It is recognized that certain types of zoning districts would be inappropriate at particular locations in the absence of special conditions. Where the applicant desires property to be rezoned to such a district in such situations, the Special Use District is a means by which such special conditions can be imposed in the furtherance of the purposes of this ordinance. The Special Use District classification will be considered in response to a petition by the owners of all of the property to be included. If, for any reason, any condition imposed pursuant to these regulations is found to be illegal or invalid, or if the applicant should fail to accept any condition, it is the intent of this ordinance that the authorization of such Special Use Permit shall be null and void and of no effect and that proceedings be instituted to rezone the property to its previous zoning classification.

Within a Special Use District, only those uses authorized by this ordinance as permitted or special uses within the zoning district with which the Special Use District corresponds shall be permitted, and all other requirements of the corresponding district and other requirements of this ordinance shall be met. If the use would be a special use in the corresponding district, all of the requirements in Article 8 for all special uses and the applicable special use shall be met. In addition, within a Special Use District, no use shall be permitted except pursuant to a Special Use Permit authorized by the Town Board of Commissioners which shall specify the use or uses authorized. The Special Use Permit may further specify conditions based on the issues raised concerning Special Uses in Article 8 of this ordinance and any other reasonable and appropriate conditions.

Section 5.4 Conditional Zoning Districts

5.4.1 Purpose

The Conditional Zoning Districts included herein allow for the consideration of certain uses that because of their nature or scale have particular impacts on both the immediate area and the community as a whole. The development of these uses cannot be predetermined and controlled by general district type regulations. In addition, circumstances often arise when a general zoning district designation would not be appropriate for a certain property, but a specific use permitted under the district would be consistent with the objectives of this section. To accommodate these unusual situations, this section establishes the conditional zoning district process. A conditional zoning district is not intended for securing early zoning for a proposal but rather is based on a firm development proposal.

5.4.2 Application and Review Process

5.4.2.1 Application. Except as herein provided, petitions to establish a conditional zoning district must be submitted and will be processed in accordance with the provisions in the UDO. Petitioning for a conditional zoning district is a voluntary procedure and can be initiated only by the owner(s) of the property (ies) in question or by his/her authorized agent. Applications for conditional zoning shall be permitted within any zoning district established with the UDO. All applications must include a sketch plan for the site as required in Section 15.3.5, drawn to scale, and supporting text that, as approved, will become a part of the ordinance amendment. The sketch plan for the site shall include any supporting information and text that specifies the actual use or uses intended for the property and any rules, regulations, and conditions that in addition to all predetermined ordinance requirements, will govern the development and use of the property. The applicant shall, at a minimum, include each of the items listed below, in addition to the items required in Section 15.3.5 and any other applicable sections of the UDO.

- a. All existing easements, reservations, and rights-of-way on the property (ies) in question.

- b. Delineation of areas within the regulatory floodplain as shown on official Flood Hazard Boundary Maps for Wake County.
- c. Existing and proposed topography at five-foot contour intervals or less.
- d. For residential uses, the number of units and an outline of the area where the structures will be located. For nonresidential uses, the approximate square footage of all structures and an outline of the area where the structures will be located.
- e. Traffic, parking, and circulation plans, showing the proposed locations and arrangement of parking spaces and access points to adjacent streets including typical parking space dimensions and locations (for all shared parking facilities) along with typical street cross-sections. This shall include all existing and proposed points of access to public streets.
- f. All proposed setbacks, buffers, screening and landscaping required by these regulations or otherwise proposed by the petitioner. In addition, the location of significant trees or tree stands on the subject property shall be identified.
- g. Generalized information on the number, height, size and location of structures.
- h. A sample of the exterior features of proposed principal structures.
- i. Proposed phasing of the project.
- j. Proposed number, location, type and size of all commercial signs.
- k. Said sketch plan, including all additional information shown on it, shall constitute part of the petition for rezoning to a conditional zoning district.

5.4.2.2 Additional requirements. When dealing with the conditional zoning district process, it may be desirable to request additional information in order to evaluate a proposed use and its relationship to the surrounding area. Therefore, the Planning Board and/or Town Board may request additional information in addition to that required in Section 5.4.2.1 as they deem necessary.

5.4.2.3 Review. In evaluating an application for the establishment of a conditional zoning district, it is appropriate for the Planning Board and the Town Board to consider the following:

- a. The policies and objectives of the adopted community plan, particularly in relation to the proposed site and surrounding area.

- b. The potential adverse impacts on the surrounding area, including but not limited to traffic, stormwater, land values, and compatibility of land use activities.

5.4.2.4 Conditions to Approval of Petition. In approving a petition for the reclassification of a piece of property to a conditional zoning district, the Planning Board may recommend, and the Town Board may request that reasonable and appropriate conditions be attached to approval of the petition. Any such conditions shall relate to the relationship of the proposed use to the surrounding property, proposed support facilities (e.g., parking areas, pedestrian circulation systems), screening and landscaping, timing of development, street and right-of-way improvements, water and sewer improvements, provision of open space, and other matters that the Planning Board or Town Board may find appropriate or the petitioner may propose. Such conditions to approval may include dedication of right-of-way or easements for streets and/or utilities to serve the development. The petitioner shall have a reasonable opportunity to consider and respond to any such conditions prior to final action by the Town Board.

5.4.3 Approval

- 5.4.3.1 Effects of Approval. If a petition for a conditional zoning district is approved, the development and use of the property shall be governed by the predetermined ordinance requirements applicable to the district's zoning classification, the approved site plan for the district, and any additional approved rules, regulations, and conditions, all of which shall constitute the zoning regulations for the approved district and are binding on the property as an amendment to these regulations and to the Zoning Map.
- 5.4.3.2 Zoning Map Designation. Following the approval of the petition for a conditional zoning district, the subject property shall be identified on the Zoning Map by the appropriate district designation followed by the letters CD. Notwithstanding, minor changes to the approved site plan may be made administratively by the Zoning Administrator.
- 5.4.3.3 Duration of Approval. The intent of this type of zoning is to provide an alternative procedure for specific development proposals. It is intended that all property be zoned only in accordance with firm plans to develop. Therefore, two (2) years from the date of approval, the Planning Board may examine the progress made to develop in accordance with approved plans to determine if active efforts are proceeding. If it is determined by the Planning Board that active efforts to comply with the approved plan are not proceeding, a report will be forwarded to the Town Board which may recommend that action be initiated to remove the conditional district in accordance with the provisions in Section 3.9.1.

Section 5.5 Accessory Uses

Accessory uses are permitted in any zoning district in accordance with the following regulations:

- 5.5.1** An accessory building, structure, or use is a building, structure, or use on the same lot or site with, of a nature customarily incidental or subordinate to, and of a character related to the principal use or structure.
- 5.5.2** Accessory uses to single and two-family dwellings, and multi-family dwellings may not include commercial uses, except as permitted as home occupations in Section 9.4 of this ordinance or for multi-family dwellings as allowed by the Board of Adjustment in accordance with the provisions of Article 5 of this ordinance.
- 5.5.3** Residences for watchmen and caretakers are permitted accessory uses to research and industrial uses.
- 5.5.4** No accessory building shall exceed thirty-five (35) feet in height, nor shall any accessory building exceed the principal building in height.
- 5.5.5** An accessory building sharing one (1) or more common walls with the principal building shall be considered part of the principal building for purposes of this ordinance and must meet all yard requirements applied to the principal building.
- 5.5.6** No detached accessory building shall be located closer than ten (10) feet to any other building or mobile home.
- 5.5.7** No accessory building (except a well house) or recreational structure or use may extend in front of the rear line of a single or two-family dwelling or mobile home.
- 5.5.8** No accessory building or recreational structure or use may extend within three (3) feet of a lot line, nor within twenty (20) feet of a street right-of-way line.
- 5.5.9** Recreational uses and buildings accessory to multi-family dwelling complexes shall be in accordance with Article 5 of this ordinance.
- 5.5.10** Fences and walls are permitted as accessory uses provided that they comply with the following:
 - 5.5.10.1** For the purpose of this Section of this ordinance, a fence is a barrier composed of wire, wood, metal, plastic, or a similar material and a wall is a barrier composed of brick, stone, rock, concrete block, or a similar masonry material.
 - 5.5.10.2** No fence or wall more than four (4) feet in height, or retaining wall more than five (5) feet in height, may be placed in any front yard, or along any public street, unless required or specifically authorized in another section of this

ordinance. This restriction includes fences or walls along side lot lines of corner lots.

- 5.5.10.3 Fences may not exceed seven (7) feet in height, except that in commercial and industrial districts, a fence may not exceed ten (10) feet in height. Fences greater than seven (7) feet in height shall be of an open type similar to woven wire or wrought iron. Fences and walls may exceed the height requirements of this Section if required or specifically authorized in another Section of this ordinance.
- 5.5.10.4 Fences or walls along side and rear lot lines that front public streets must comply with setback requirements of this ordinance. Fences and walls along side and rear lot lines not fronting public streets are exempt from the setback requirements of this ordinance. However, no fence or wall may enclose drainage culverts and pipes that are maintained by the Town or by NCDOT.
- 5.5.10.5 No fence or wall shall impede vision as regulated in Section 9.1 of this ordinance.
- 5.5.10.6 Fences, if replaced, shall meet the requirements of this Section.

5.5.11 Satellite Dishes

- (A) Intent
The intent of this section is to provide for proper location, height, and size of dish antennas so as not to impose unreasonable limitations on or prevent the reception of satellite delivered signals by receive-only antennas.
- (B) General requirements
A zoning permit is required when installing or moving a dish antenna greater than one meter (39.37") in diameter.
- (C) Location in yards
A dish antenna greater than one meter (39.37") in diameter shall be installed in rear yards only.
- (D) Setback requirements
The setback of a dish antenna greater than one meter (39.37") in diameter shall be measured from the center mounting post supporting the antenna.
 - (1) The minimum required setback for these dish antennas from side lot lines shall be the same as for the principal building, but in no case shall any part of the antenna be located closer than 5 feet of the property line.
 - (2) The minimum required setback for these dish antennas from the rear lot line shall be 10 feet, but in no case shall any part of the antenna be located closer than 5 feet to the property line.

(E) Maximum height requirements

The following height restrictions shall apply:

- (1) In residential districts the maximum height of a dish antenna installed on the ground shall be 10 feet. If installed on the roof, the dish shall not be greater than one meter (39.37") in diameter; shall not project higher than 5 feet above the actual height of the building;
- (2) In commercial districts, the maximum height of dish antennas greater than one meter (39.37") in diameter on the ground shall be 10 feet. If installed on the roof, the dish shall not be larger than 12 feet in diameter; shall not project higher than five (5) feet above the actual height of the building; and shall be set back from the sides of the building at least 15 feet. Dish antennas may be placed on a communications tower and/or water tower, subject to the regulations contained in Sec. 27. Commercial dish antennas shall not be used for any advertising purposes.

(F) Buffering Requirements

- (1) In all residential districts, dish antennas greater than one meter (39.37") in diameter shall be surrounded on all sides except along the antenna's reception window, with any one (1) or combination of evergreen vegetation, topography, landscaped earth berm, or architectural features such as fences or buildings so that view of the lower two-thirds (2/3) of the dish area is restricted from all public streets and six (6) feet above ground level of surrounding residential property. If evergreen vegetation is used, a species and size may be planted which can be expected to screen the required area within two (2) years of normal growth. Any screening vegetation which dies must be replaced.
- (2) In commercial and industrial districts, dish antennas greater than one meter (39.37") in diameter must be screened from view from surrounding residential property and residential streets. The screening requirements as to materials and height shall be the same as in 5.4.11.5(a) above.

Section 5.6 Temporary Uses and Structures
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5.6.1 Temporary uses and structures shall be controlled by issuance of Temporary Use Permits for uses not to exceed three months duration during a calendar year. All requests for Temporary Use Permits shall be submitted to the Zoning Administrator, who shall issue an approval or denial of the permit within thirty (30) days of receipt of each completed application.

5.6.2 The establishment of temporary sales lots for farmers markets, Christmas trees, and other seasonal agricultural products, plus related goods, are permitted in non-residential districts with the following conditions:

- 5.6.2.1 Storage of goods in or sale of goods from trailer(s) on the site is prohibited. Truck trailers and flat beds are not permitted except for short-term delivery services.
- 5.6.2.2 The use may only be located on a vacant lot or on a lot occupied by a non-residential use.
- 5.6.2.3 Temporary uses using a tent or similar canopy shall secure approval from the Wake County Fire Marshall's office prior to erecting such a canopy.
- 5.6.2.4 Temporary uses shall present proof of property owner approval prior to the application of a use permit.
- 5.6.2.5 The use shall be conducted behind the prevailing established setback line for structures in either direction on the same side of the street.
- 5.6.2.6 Off-street parking may be provided behind or to the side of the established use, but not forward of the established setback line.
- 5.6.2.7 On-site parking may be provided on a dust-free, pervious area.
- 5.6.2.8 Signs and lighting on the premises of a temporary use shall meet the same standards as permitted in the district in which the temporary use is situated.
- 5.6.2.9 The temporary permit issued by the Town shall be displayed in public view during hours of operation.
- 5.6.3** Operators of temporary use facilities shall comply with the applicable provisions of Article 8 of this UDO, specifically 8.1.2, 8.1.3, 8.1.4 and 8.1.6.
- 5.6.4** Applicants for Temporary Use and Temporary Special Use Permits shall provide four (4) copies of a sketch map identifying the location of all temporary structures, trailers, product display areas, parking areas, road access points and other temporary uses and improvements to the property.

Section 5.7 Application of Regulations

The regulations set forth in this ordinance shall affect all land, every structure, and every use of land and/or structure and shall apply as follows:

- 5.7.1** No structure or land shall hereafter be used or occupied and no structure or part thereof shall be erected, moved or structurally altered except in compliance with the regulations of this ordinance for the district in which it is located.
- 5.7.2** No structure shall hereafter be erected or altered so as to exceed the height limit or density regulations of this ordinance for the district in which it is located.

- 5.7.3** No lot, even though it may consist of one (1) or more adjacent lots of record in single ownership, shall be reduced in size so that the lot area per dwelling unit, lot width, yard, and lot coverage requirements and other requirements of this ordinance are not maintained. This prohibition shall not be construed to prevent the purchase or condemnation of narrow strips of land for public utilities or street right-of-way purposes.
- 5.7.4** No part of a yard or other open space required about any structure or use for the purpose of complying with the provisions of this ordinance shall be included as a part of a yard or other open space similarly required for another structure or use.
- 5.7.5** In any district, no more than one (1) principal building or use may be erected on a single lot of record, except as specifically permitted in other sections of this ordinance.

Section 5.8 Interpretation of Regulations

The regulations in this ordinance shall be enforced and interpreted according to the following rules:

- 5.8.1** Uses not designated in the district regulations as permitted or special uses shall be prohibited. Special uses are permitted according to the additional regulations imposed. These special uses can be approved only by the Board of Adjustment or Town Board as specified in this ordinance. Additional uses may be added to the ordinance by amendment.
- 5.8.2** Regulations set forth by this ordinance shall be minimum regulations. If the requirements set forth in this ordinance are at variance with the requirements of any other lawfully adopted uses, regulations, or ordinances, the more restrictive or higher standard shall govern.
- 5.8.3** Unless restrictions established by covenants with the land are prohibited by or contrary to the provisions of this ordinance, nothing herein contained shall be construed to render such covenants inoperative.

Section 5.9 Exceptions and Modifications

- 5.9.1** The minimum front yard requirements of this ordinance for dwellings shall not apply on any lot where the average front yard of existing dwellings located wholly or in part within one hundred (100) feet on each side of such lot within the same block and zoning district and fronting on the same side of the street is less than the minimum required front yard. In such cases, the front yard on such lot may be less than the required front yard, but not less than the adjacent dwelling with the greatest front yard depth or the average front yard of existing dwellings located wholly or in part within one hundred (100) feet on each side, whichever is greater.
- 5.9.2** In any residential district for corner lots, the side yard requirements along the side street(s) shall be increased by ten (10) feet.

5.9.3 The Board of Adjustment shall review as a special use, structures such as church spires, belfries, cupolas, and domes not intended for human occupancy, monuments, water towers, observation towers, transmission towers, chimneys, smokestacks, conveyors, flag poles, radio towers, masts, aerials, and similar structures, which exceed the height limitation of this ordinance.

5.9.4 Uncovered stairs, landings, terraces, porches, balconies, and fire escapes may project into any yard, but such projection may not exceed six (6) feet and such projection may not be closer than then (10) feet to any lot line.

5.9.5 Architectural projections, such as chimneys, flues, sills, eaves, belt courses, and ornaments, may project into any required yard, but such projection shall not exceed three (3) feet.

5.9.6 Utility Uses and Special Purpose Lots

5.9.6.1 Utility Uses. The requirements of this ordinance do not apply to roads, water, sewer, gas, electric, telephone, and similar utility lines except as specifically mentioned by this ordinance.

5.9.6.2 Special Purpose Lots. The requirements of this ordinance with respect to road frontage, minimum lots area, and lot dimensions shall not apply to lots for sewer lift stations and similar utility uses. Such lots shall comply with the requirements below.

- (a) Minimum size. The special-purpose lot shall be permitted only after the Board of Commissioners has determined that the proposed lot has sufficient dimensions to accommodate the intended use and, where required by this ordinance, buffer strips.
- (b) Access easement. If the special purpose lot does not have direct access to a public street, an easement for ingress and egress with a minimum width of ten (10) feet shall be platted.
- (c) Platting. The subdivision to create such a lot shall be approved in accordance with the UDO, Section 15.3.4, Procedure for Review of Minor Subdivisions. The final Plat shall be label the lot as “Special Purpose Lot for Use as _____.”

5.9.7 Lot width on lots which front on the turn-around circle of a cul-de-sac may be measured at the line formed by connecting the midpoint of the side lot line of the shorter side with a point on the longer side lot line which is the same distance from the front lot line as the midpoint of the shorter side, or if both side lot lines are the same length, at the line connecting the midpoints of the side lot lines. All yard requirements must be met on such lots. If a lot has more than two (2) sides, the side lot lines to be used are the two (2) which connect with the front lot line.

Section 5.10 Nonconformities

A lawful pre-existing use, structure, or lot which does not meet the requirements of the UDO is called a nonconformity. Special provisions apply to nonconformities and these are listed in Sections 5.10.1 to 5.10.5 of this ordinance. In lieu of the provisions in this Section, signs shall comply with the requirements in Article 11 and nonconforming mobile home parks shall comply with the requirements in Article 8 of this ordinance.

5.10.1 Existing Substandard Structures

- 5.10.1.1 The conforming use of a structure as explained in Section 5.10.4 of this ordinance, existing at the time of the adoption of this ordinance may be continued although the structure's size or location does not conform with the yard, dimensional, height, parking, loading, access, lot area, and lot coverage provisions of this ordinance. Such structures are called substandard structures.
- 5.10.1.2 Substandard structures with conforming uses may be added to or enlarged provided that the enlargements comply with the yard, height, parking, loading, access, and all other applicable requirements of this ordinance for the district in which such a structure is located.
- 5.10.1.3 Substandard structures which are damaged or destroyed by fire, explosion, flood, or other calamity, may be reconstructed and shall comply with the yard, height, parking, loading, access, and all other applicable provisions of this ordinance for the district in which such structure is located unless the structure is situated on a substandard lot of record, in which case the provisions concerning substandard lots of record shall apply, or unless the incomplete nature of the damage would make it more feasible to rebuild in the previous location, in which case the Board of Adjustment is authorized to approve a variance to allow the reconstruction or replacement.
- 5.10.1.4 A substandard structure may not be moved off the lot or lots on which it is located unless when relocated it complies with the regulations for the district in which it is located.

5.10.2 Existing Nonconforming Uses

The lawful nonconforming use of a structure, land, or water existing at the time of the adoption of this ordinance may be continued except:

- 5.10.2.1 Only that portion of the land or water in actual use may be so continued and the nonconforming use may not be enlarged or extended, except as provided for in Section 5.10.2.5, nor may any additional structures be added to be occupied by the nonconforming use, except that existing cemeteries can expand to the boundaries of the property which they owned at the time they became nonconforming, provided that required setbacks are met.

- 5.10.2.2 Normal maintenance, repair, and incidental alteration of a building occupied by a nonconforming use is permitted provided it does not extend the nonconforming use. A structure occupied by a nonconforming use may be changed to make the structure more in character with the use permitted in the district in which it is located.
- 5.10.2.3 If such nonconforming use is damaged by fire, explosion, flood, or other calamity to the extent of more than seventy-five percent (75%) of its current assessed value, it shall not be restored except so as to comply with the use provisions of this ordinance, except that nonconforming single and two-family dwellings may be restored in accordance with the provisions of Section 5.10.1.3 of this ordinance.
- 5.10.2.4 If such nonconforming use is discontinued or terminated for a period of more than one hundred and eighty (180) days, any future use of the structure, land, or water shall comply with the provisions of this ordinance.
- 5.10.2.5 A nonconforming manufactured home used as a principal residential structure may be replaced with another manufactured home only if:
- (1) the replacement is a manufactured home that bears a valid seal indicating conformance with the current National Manufactured Housing Construction and Safety Standards Act;
 - (2) the replacement manufactured home is a Class A manufactured home, as defined in Section 16.2;
 - (3) the replacement manufactured home must have been manufactured within five (5) years from the date of a request for a replacement of the existing mobile home;
 - (4) it is not in a Special Use District, was not granted a Special Use Permit to allow its presence at a particular location or zoning district, and it is not in the Mixed Use District or Town Center District .
- The replacement manufactured home must receive a Certificate of Occupancy no later than 180 days of the removal of the original manufactured home. The manufactured home must meet all zoning district requirements.
- 5.10.2.6 A nonconforming use may not be moved off the lot or lots on which it is located unless when relocated it complies with the regulations for the district in which it is located.
- 5.10.2.7 The Board of Adjustment may permit as a special use a change in nonconforming use provided that the requirements of subsections 5.9.2.1,

5.9.2.2, 5.9.2.3, 5.9.2.4, 5.9.2.5, and 5.9.2.6 of this Section are met and the Board of Adjustment finds that such new use would be more in character with the uses permitted in the district than the previous use. In permitting such change, the Board of Adjustment may require appropriate conditions and safeguards in accordance with the provisions of this ordinance.

- 5.10.2.8 Once a nonconforming use has been changed or altered so as to comply with the provisions of this ordinance, it shall not revert back to a nonconforming use. Once the Board of Adjustment has permitted the substitution of a more restrictive nonconforming use for an existing nonconforming use, the substituted use shall lose its status as legal nonconforming use and become subject to all the conditions required by the Board. If the structure occupied by a nonconforming use is changed so as to be more in character with the uses permitted in the district in which it is located, it shall not subsequently be changed to be less in character.

5.10.3 Existing Substandard Lots

- 5.10.3.1 Where the owner of a lot of record at the time of adoption of this ordinance or his successor in title thereto does not own sufficient land to enable him to conform to the lot area or lot width requirements of this ordinance, such a lot may be used as a building site for a single-family residence in a district in which residences are permitted; or as a site for a mobile home only if the lot is in a district where mobile homes are permitted; provided that the lot width and lot area are not more than twenty percent (20%) below the minimum specified in this ordinance, and further provided that the appropriate county health department approves the reduction if on-site water or wastewater facilities are involved. In any case where the lot area and lot width are more than twenty percent (20%) below the minimum specified in this ordinance or other requirements cannot be met, the Board of Adjustment is authorized to approve as a variance such dimensions as shall conform as closely as possible to the required dimensions if the Wake County Health Department submits a letter of approval if on-site water or wastewater facilities are involved. If the pre-existing substandard lot is not in a district where single-family dwellings or mobile homes are permitted, the Board of Adjustment may issue a variance to allow some reasonable use.
- 5.10.3.2 If two (2) or more adjoining lots of record are in one (1) ownership when this ordinance is adopted, or at any time after the adoption of this ordinance, and such lots individually do not meet the minimum dimensional requirements of this ordinance for the district in which such lots are located, then such group of lots shall be considered as a single lot or several lots of minimum permitted width and area for the district in which located, and therefore, the provisions of subsection 5.10.3.1 do not apply. No portion of said lot or structure shall be used or sold in a manner which diminishes compliance with the requirements of this ordinance.

5.10.4 Conforming Uses and Structures

- 5.10.4.1 Any use or structure existing prior to the effective date of this ordinance which conforms to the regulations of this ordinance for permitted uses and satisfies the dimensional requirements and any other applicable regulations of the district in which it is located, may be continued, provided any changes in use or structural or other changes shall comply with the provisions of this ordinance.
- 5.10.4.2 Any structure or use existing prior to the effective date of this ordinance which would be permitted by this ordinance as a special use in the district in which it is located, may be continued as if a special use permit had been applied for and issued, provided that any changes in use or structural or other changes shall comply with the provisions of this ordinance.

5.10.5 Effect of Amendments

If subsequent amendments to this ordinance or the official zoning map result in the creation of additional non-conformities or conformities, such non-conformities or conformities shall be governed by the provisions of this Section unless otherwise stated in the amendment.

Amendments

10/04/04 to entire document, 02/22/05 to §6.3, 03/06/06 to §5.5.11 under TA06-01, 9/22/09 to §5.1 under TA09-07 and TA09-08; 4/20/10 to §5.1 under TA09-13; 8/5/13 to §5.1 under TA13-05.